

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 101 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PRITIBEN MAHESHBHAI MODI

Versus

STATE OF GUJARAT

Appearance:

MR Arun H Mehta and Mr EE SAIYED for Petitioner
MR UNMESH D SHUKLA for Respondent No. 2
Ms. Harsha Devani, AGP for the State

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 26/09/96

ORAL JUDGEMENT

Heard Mr A H Mehta, learned Advocate for the petitioner, Mr Umesh D Shukla, learned Advocate for the non-applicant and Ms. Harsha Devani, learned AGP.

2. The issue which is required to be decided in this Criminal Misc. Application is whether the petitioner-wife can be charged for offence of kidnapping

or forcibly taking away her own minor child from the custody of the respondent No.2-husband. It is not in dispute that the petitioner's minor son Bhavin was 3 years old on the date of the incident i.e. 30th December 1995. It is alleged that the husband-complainant after getting down from the car, was proceeding towards the house with his minor son-Bhavin, his wife arrived with her brother and took out Bhavin from the custody of the husband and ran away. On these facts, a complaint was filed in the Court of learned Magistrate, who in turn sent the complaint to Police under section 156(3) of the Cr.P.C. for investigation, on which the police registered a case bearing No.3/96 at Police Station Langhnaj, Distt. Mehsana for offence under sections 363 and 364 read with 120 B/34 of the IPC. To constitute an offence under section 363 of the IPC, the minor must have been taken away from the lawful guardianship. A person who in good faith believes himself/herself to be entitled to lawful custody, (unless such act is committed for immoral or unlawful purpose) cannot be said to have committed offence of kidnapping in view of exception appended to section 361 of the IPC. Petitioner being undisputedly the mother of the minor child Bhavin, there could at least be reason to believe that she was entitled to lawful custody of the child. The matter requires no further consideration. The learned Magistrate before sending the complaint for investigation ought to have considered whether the facts even if it goes unrebutted, constitutes any offence.

In view of the aforesaid, this Criminal Misc. Application is allowed. The police inquiry No.3/96 of Langhnaj Police Station, District Mehsana is hereby quashed and set aside. Rule made absolute.

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